

1 Fred Hickman (#124406)  
2 fredhickman@gmail.com  
3 17602 17th St Ste 102-206  
4 Tustin CA 92780  
5 714-315-1565; fax 714-838-0835  
6 Attorney for Defendants: Steve Weera  
7 Tonasut, as Trustee of the Tonasut  
8 Family Trust dated June 14, 2004,  
9 for and in place of the erroneously named  
“Steve Weera Tonasut Trust”;  
and, Emil Assentato; and, Tax Deed  
Enterprises, LLC, a Delaware limited  
liability company.

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA

12 WESTERN DIVISION

13 CLINTON BROWN,  
14 PLAINTIFF,  
15 VS.  
16  
17 EMIL ASSENTATO, TAX DEED  
ENTERPRISES LLC, STEVE WEERA  
TONASUT TRUST,  
18  
19 DEFENDANTS.

Case No.:LACV23-02972-MEMF(KSx)

REQUEST FOR JUDICIAL NOTICE  
I.S.O. MOTION TO DISMISS THE  
FIRST AMENDED COMPLAINT,  
[DOC. #40] BY ALL DEFENDANTS  
FOR FAILURE OF PLAINTIFF TO  
STATE A CLAIM UNDER RULE  
12(b)(6) AND RULE 9(b) AND 15  
U.S.C. § 78u-4

[FILED WITH NOTICE OF MOTION,  
POINTS & AUTHORITIES, AND  
LODGED PROPOSED ORDER]

DATE: February 29, 2024  
TIME: 10:00 A.M.  
CTRM: 8B

23 Under F.R.E. 201 Defendants and movants request that the Court take judicial notice of  
24 the following facts and documents submitted in support of the motion to dismiss the complaint  
25 filed herewith. The list is set forth, then the authorities in support.

26 Request No. 1., Exh. 1, Loan Agreement, between The Atlas, LLC and Emil Assentato,  
27 dated February 2, 2021.

REQUEST FOR JUDICIAL NOTICE I.S.O. MOTION DISMISS FIRST AMENDED COMPLAINT  
BROWN VS. ASSENTATO Case#LACV23-02972

## AUTHORITIES

Grounds for Request No. 4 is contained in the exhibit, a loan agreement, a true and correct copy of the document either referred to in the Complaint or forming or relating directly to the basis of Plaintiff's claims, as loan document signed by Plaintiff, and whose authenticity is not believed to be in question. A court may consider evidence on which the complaint "necessarily relies" if (1) the complaint refers to the document; (2) the document is central to the plaintiff's claim; and (3) no party questions the authenticity of the copy attached to the 12(b)(6) motion.

*Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006) (judicial notice taken of Release signed by Plaintiff); *Parrino v. FHP, Inc.*, 146 F.3d 699, 706 (9th Cir. 1998) (plaintiff may not deliberately omit references to documents upon which his claim is based to survive a 12(b)(6) motion; judicial notice taken of documents of Group Plan Application, as complaint mentioned “group plan” and “cost containment plan” of FHP); *Branch v. Tunnell*, 14 F.3d 499, 453-54 (9th Cir. 1994), overruled on other grounds by *Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002) (documents that are not attached to the complaint may be incorporated by reference if the plaintiff has referred to the document in the complaint or if the document forms the basis of the plaintiff’s claims; took judicial notice of an Affidavit and a Deposition mentioned in an amended complaint); *Richardson v. Wells Fargo Bank, N.A.*, 2016 U.S. Dist. LEXIS 107090, (Phillips, J., C. D. Cal., Aug. 11, 2016 (judicial notice of loan modification documents taken)).

/s/ Fred Hickman

Fred Hickman fredhickman@gmail.com  
Attorney for all Defendants:  
Tonasut, Assentato and Tax Deed Enterprises, LLC

## ***LOAN AGREEMENT***

\$250,000.00

Date: February 2, 2021

For value received, the undersigned The Atlas, LLC (the "Borrower"), at 10226 Regent St, Los Angeles, CA 90034, California 90034, promises to pay to the order of Emil Assentato (the "Lender"), at 141 Piping Rock Rd, Locust Valley, New York 11560 (or at such other place as the Lender may designate in writing), a line of credit up to \$250,000.00 at 5 percent interest accrued monthly and added to balance.

### **I. TERMS OF REPAYMENT**

#### **A. Payments**

The unpaid principal and interest shall be payable in full on December 31, 2021 (the "Due Date").

#### **B. Acceleration of Debt**

If any payment obligation under this Note is not paid when due, the remaining unpaid principal balance and any accrued interest shall become due immediately at the option of the Lender.

### **II. PREPAYMENT**

The Borrower reserves the right to prepay this Note (in whole or in part) prior to the Due Date with no prepayment penalty.

### **III. COLLECTION COSTS**

If any payment obligation under this Note is not paid when due, the Borrower promises to pay all costs of collection, including reasonable attorney fees, whether or not a lawsuit is commenced as part of the collection process.

### **IV. DEFAULT**

If any of the following events of default occur, this Note and any other obligations of the Borrower to the Lender, shall become due immediately, without demand or notice:

- 1) the failure of the Borrower to pay the principal and any accrued interest when due;

- 2) the liquidation, dissolution, incompetency or death of the Borrower;
- 3) the filing of bankruptcy proceedings involving the Borrower as a debtor;
- 4) the application for the appointment of a receiver for the Borrower;
- 5) the making of a general assignment for the benefit of the Borrower's creditors;
- 6) the insolvency of the Borrower;
- 7) a misrepresentation by the Borrower to the Lender for the purpose of obtaining or extending credit; or
- 8) the sale of a material portion of the business or assets of the Borrower.

## **V. SEVERABILITY OF PROVISIONS**

If any one or more of the provisions of this Note are determined to be unenforceable, in whole or in part, for any reason, the remaining provisions shall remain fully operative.

## **VI. MISCELLANEOUS**

All payments of principal and interest on this Note shall be paid in the legal currency of the United States. The Borrower waives presentment for payment, protest, and notice of protest and demand of this Note.

No delay in enforcing any right of the Lender under this Note, or assignment by Lender of this Note, or failure to accelerate the debt evidenced hereby by reason of default in the payment of a monthly installment or the acceptance of a past-due installment shall be construed as a waiver of the right of Lender to thereafter insist upon strict compliance with the terms of this Note without notice being given to Borrower. All rights of the Lender under this Note are cumulative and may be exercised concurrently or consecutively at the Lender's option.

This note may not be amended without the written approval of the holder.

## **VII. GOVERNING LAW**

This Note shall be construed in accordance with the laws of the State of California.

## **VIII. SIGNATURES**

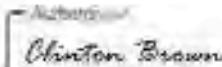
This Note shall be signed by Clinton Brown, on behalf of The Atlas, LLC and Emil Assentato.

[SIGNATURE PAGE FOLLOWS]

**IN WITNESS WHEREOF**, this Agreement has been executed and delivered in the manner prescribed by law as of the date first written above.

Signed this        day of 02/02/2021,       , at Los Angeles  
California

Borrower:  
The Atlas, LLC

By:   
Clinton Brown  
2021/02/02 11:17:34 PM GMT

Date: 02/02/2021

Lender:  
Emil Assentato

By:   
Emil Assentato

Date: 2-7-21

1 PROOF OF SERVICE

2 All parties and persons are served by filing and the ecf transmission, as all  
3 parties and persons are on ecf in this matter, including the plaintiff, in pro se.

4 I hereby certify that I am a member of the Bar of the United States District Court,  
5 Central District of California.

6 Executed on Jan. 17, 2024, at Santa Ana, California.

7  
8 /s/ Fred Hickman

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10 Fred Hickman  
fredhickman@gmail.com

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